

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Paula Borden on September 29, 2011. Claims 1-14 and 18-20 are allowed.

The application has been amended as follows:

Please replace claim 12 with the following amended claim 12:

12. (Amended claim 12) A method of treatment, comprising:  
a) administering to a subject a therapeutically effective amount of a formulation comprising:

an aqueous solvent and having a divalent cation and a peptide dissolved therein,  
wherein the divalent cation is added to the solvent such that substantially all of the divalent  
cation is dissolved in the solvent, wherein the divalent cation is a Ca<sup>2+</sup> or a Zn<sup>2+</sup> ion,

and wherein the peptide is non-glycosylated, has a length of less than about 100 amino  
acids, and comprises an amino acid sequence selected from the group consisting of:

Ala Val Glu Ser Thr Val Ala Thr Leu Glu Ala X Pro Glu Val Ile Glu Ser Pro Pro Glu (SEQ  
ID NO:1); and

Ala Val Glu Ser Thr Val Ala Thr Leu Glu Asp X Pro Glu Val Ile Glu Ser Pro Pro Glu (SEQ  
ID NO:2),

wherein amino acid residue X is a phosphoseryl residue

~~a carrier and composition comprising a divalent cation and a peptide, the peptide being non-glycosylated, less than about 100 amino acids, and comprising an amino acid sequence selected from the group consisting of:~~

~~Ala Val Glu Ser Thr Val Ala Thr Leu Glu Ala Ser(P) Pro Glu Val Ile Glu Ser Pro Pro Glu (SEQ ID NO:1); and Ala Val Glu Ser Thr Val Ala Thr Leu Glu Asp Ser(P) Pro Glu Val Ile Glu Ser Pro Pro Glu (SEQ ID NO:2),  
and conservative substitutions therein; and~~

b) allowing the formulation to act on the subject in a manner which prevents a disease selected from the group consisting of dental caries and periodontal disease.

### ***Rejoinder***

2. Claims 1-11 and 18-20 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 12-14, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 9/22/10 is hereby withdrawn**. In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the

provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Correspondence regarding this application should be directed to Group Art Unit 1645. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Remsen. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is 571-273-8300 which is able to receive transmissions 24 hours/day, 7 days/week.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (571) 272-0858. The examiner can normally be reached on Monday-Thursday from 8:00 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol, can be reached on (571) 272-0835.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0500.

/Jennifer E. Graser/  
Primary Examiner, Art Unit 1645

9/29/11